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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/623,223

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EXAMINER

HALL, ARTHUR O

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

03/26/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/623,223	<b>Applicant(s)</b> GRAUZER ET AL.	
	<b>Examiner</b> ARTHUR O. HALL	<b>Art Unit</b> 3714	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-22,30,37,38,43-45 and 55.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Peter D. Vo/  
Supervisory Patent Examiner, Art Unit 3714

/Arthur O Hall/  
Examiner, Art Unit 3714

Continuation of 11. does NOT place the application in condition for allowance because:

Examiner acknowledges applicants' amendments of the drawings directed to Examiners objection of the drawings with respect to Figure 10 as set forth in the Final Office Action dated 12/22/2008, which obviate the objection to the drawing. Therefore, Examiner withdraws further objection to the drawing.

Examiner hereby enters the amendments of Fig. 10 and amendments cancelling claims 23-29.

However, Examiner maintains rejections of claims 1-22, 30, 37-38, 43-45 and 55 as set forth in the Final Office Action dated 12/22/2008 for the reasons cited below.

In response to applicant's argument that the combination of Albrecht, Johnson '085 and Huen is improper, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art (See MPEP 2145 III; see also *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981)). Hence, Examiner submits the following reasons as to why the combination of Albrecht, Johnson '085 and Huen as well as Purton render the claimed invention obvious.

Applicants argue that Albrecht has card insertion surfaces at heights and positions not at the same top surface as the removal area, that the structure does not move cards one-at-a-time onto the single collection surface that is elevator lifted to the top surface because cards are moved into different compartments first, and that the device is not compact so as to be combined with Johnson '085 since the shuffling mechanism requires a vertical array of compartments and a card collection tray or surface below. Applicants further argue that the lid or cover of Huen is not over an elevator in the card collection area since only single cards are moved out of the device one-at-a-time and since the cover for Huen is for a specific functional purpose, and thus cannot be combined with Albrecht and Johnson '085. Applicants even further argue that Johnson '085 does not have an elevator that raises randomized cards for removal, that the card input region and card removal region is at a different elevation than that of Albrecht, that the grippers would add significant technical complexity to Albrecht by being added to the elevator in the same vertical region of the shuffler of Albrecht, that the collection surface of Johnson '085 is rigid and immovable, and that the collection surface is never elevated.

Examiner submits that Albrecht provides a card collection platform or surface along with a tray that structurally provide insertion of cards one-at-a-time onto the platform after the tray is spun out of the way such that the platform is then lifted by the elevator to the deck removal area at the top surface of the device (column 9, lines 28-55, column 13, lines 45-48 and Figs. 2, 5c and 5d, Albrecht). Examiner further submits that Johnson '085 merely provides grippers and a fixed lower surface that allows the platform of Albrecht to be positioned at rest to receive the cards one-at-a-time after being randomized by the gripper handling system of Johnson '085 based on a common structural insertion of cards one-at-a-time onto the moveable platform of Albrecht or the moveable grippers of Johnson '085 when the tray is out of the way, thereby requiring no modification of Albrecht to implement the grippers of Johnson '085 to complete the randomization of cards (column 5, lines 29-35, column 7, lines 9-40 and Figs. 7-10, Johnson '085). Examiner also submits that Huen teaches a lid or cover hinged at one end of a card dispenser and supported over the dispenser that is structurally configured to allow the cards raise to the top surface of Albrecht and Johnson '085 combined to be removed therefrom the common card collection areas regardless of whether Huen is functionally designed to dispense only one card at a time (column 2, lines 16-24, column 3, lines 29-39 and Fig. 1, Huen). Hence, Examiner submits that the combination of Albrecht, Johnson '085 and Huen as well as Purton continues to render claims 1-22, 30, 37-38, 43-45 and 55 unpatentable or obvious under 35 USC 103(a).